

**IN THE HIGH COURT OF JUDICATURE AT  
PATNA**

**First Appeal No.61 of 1990**

**Against the Judgment and Decree dated 16<sup>th</sup> March, 1988  
passed by Sri Madhvendra Sharan, Sub Judge II Court  
Patna in title suit No.68 of 1984.**

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Jai Nandan Yadav & Ors

....Defendants-Appellant/s

Versus

Sahaja Yadav & Ors

.....Plaintiffs-Respondent/s

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**Appearance :**

For the Appellant/s : Mr. Sidheswary Narayan Singh, Sr. Advocate  
Mr. Kamla Prasad Rai, Advocate with him.

For the Respondent/s : Mr. Shashi Shekhar Dwivedi, Sr. Advocate  
Mr. Nand Kishore Prasad II, Advocate  
with him.

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**Dated : the 4<sup>th</sup> day of September, 2012**

**P R E S E N T**

**CORAM : THE HON'BLE MR. JUSTICE MUNGESHWAR SAHOO**

**CAV J U D G M E N T**

**Mungeshwar**

**Sahoo, J.**

1. The defendants have filed this First Appeal against the Judgment and Decree dated 16.03.1988 passed by Sri Madhvendra Saran, the learned Subordinate Judge II Court, Patna in title suit No.68 of 1984 decreeing the plaintiffs-respondents' suit.
2. The plaintiff-respondent filed the aforesaid title suit No.68 of 1984 for declaration of the plaintiff title and / or recovery of possession of

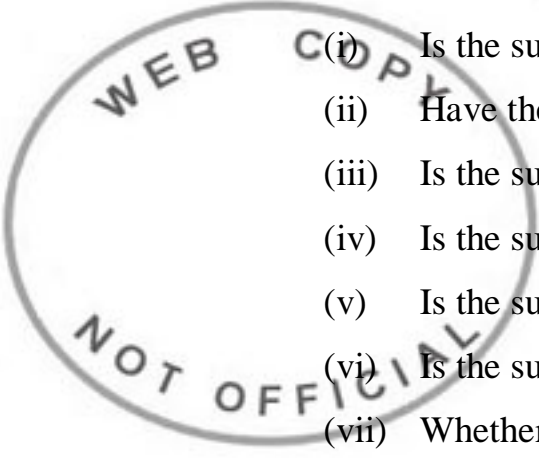
the suit property and in the alternative prayed for partition to the extent of 1/4<sup>th</sup> share.

3. According to the plaintiff's case, Gyani Yadav and Akbar Yadav were brothers. Akbar Yadav died leaving behind his widow Mostt. Mangari. Gyani Yadav died leaving two sons and a daughter, namely, Kuldeep Yadav, Bharosa Yadav and Panbatiya Devi. The names of Kuldeep, Bharosa and Panbatia were recorded in the cadastral survey record of right. Although name of Panbatiya was recorded but she had no interest or right in the suit property. Kuldeep Yadav had a son Rameshwar Yadav from his first wife and two sons Hari Yadav and Neta Yadav from second wife. Neta Yadav died issueless in the year 1943-44. The defendants are the sons of Rameshwar Yadav s/o of Kuldeep Yadav. Bharosa Yadav had separated 40-45 years. On his death, his 4 daughters became the owner of his property, therefore, they transferred the property of Bharosa Yadav. Hari Yadav and Rameshwar Yadav s/o Kuldeep Yadav also separated from each other 16 years ago but their laggit remain joint. However, when Hari Yadav fell in need of money, he transferred the Schedule (ka) lot No.1 land to the plaintiff No.1 and Mahant Yadav father of the plaintiff No.3 by registered sale deed dated 14.7.1970. The remaining land of Hari was transferred by his son Ram Naresh Yadav through registered sale deed dated 16.11.1974 in favour of the plaintiff. Ram Naresh Yadav Sasural was at Bharatpur, therefore, after selling the property, he started living in Sasural. In 144 Cr. Proceeding which was

converted to a proceeding under Section 145 Cr.P.C., the possession of the defendants was declared. But, in fact, the plaintiffs are in cultivating possession of the suit lands.

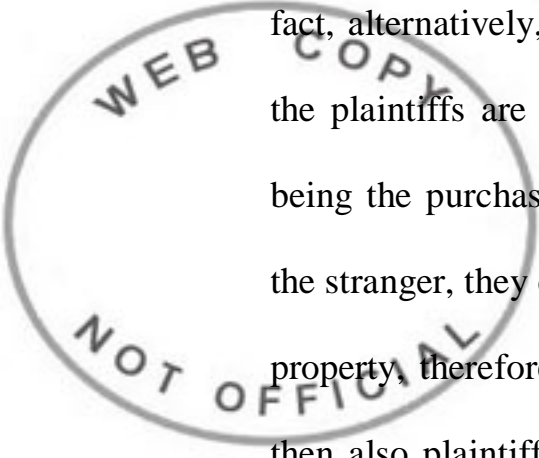
4. The defendants filed contesting written statement. Besides taking various legal pleas, their main contention is that Kuldeep never married second wife. After death of first wife, he kept a concubine who had come to live with him with a child named Hari who was not the son of Kuldeep. Neta was the son of Kuldeep who died issueless in the year 1943-44. Panbatiya was not the daughter of Gyani Yadav rather Pankuri Devi was the daughter of Gyani Yadav and Panbatiya Devi was the daughter of Akbar Yadav. On the death of Mangri, Panbatiya had no share but to avoid future complication, her son executed registered deed of gift dated 12.9.1974 with respect to his interest in favor of defendants. Therefore, on the death of Kuldeep, the defendants became the absolute owner of the entire property. The sale deeds executed by Hari or his sons in favour of the plaintiff are illegal, void, ab initio without consideration and no Takabjul Badlen was performed and moreover vendors had no title to the property, therefore, no title conferred on the plaintiffs through the sale deeds. The plaintiffs are not in possession of the property nor they ever tried to come in possession of the property nor their name is mutated. The defendants have also purchased the property from 4 daughters of Bharosa on 8.2.1974 through registered sale deeds.

5. On the basis of the aforesaid pleadings the following issues were framed by the trial Court :-

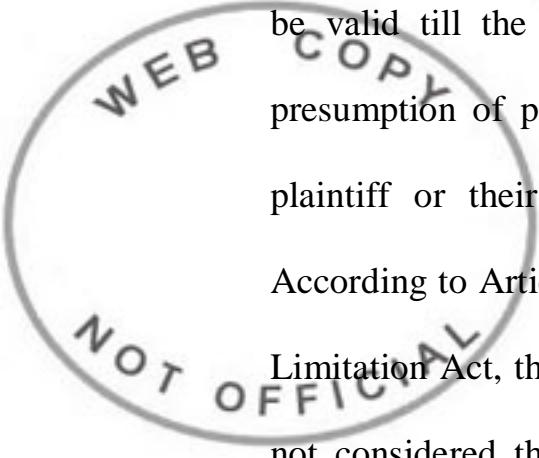
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- (i) Is the suit as framed maintainable?
  - (ii) Have the plaintiffs any cause of action for the suit?
  - (iii) Is the suit barred by law of limitation and adverse possession?
  - (iv) Is the suit barred by estoppel, acquiescence and waiver?
  - (v) Is the suit barred u/s 34 of Special Relief Act?
  - (vi) Is the suit undervalued and court fee paid insufficient?
  - (vii) Whether Hari Yaav and Neta were sons of late Kuldeep Yadav.
  - (viii) Are the sale deeds dated 14.7.1970 and 16.11.1974 in question legal, valid and for consideration?
  - (ix) Whether Panbatia was daughter of Gyanti?
  - (x) Are the sale deeds in question legal, valid and for consideration and whether the plaintiffs acquired title to and possession over the suit land?
  - (xi) To what other relief or reliefs the plaintiffs are entitled?

6. After trial, the trial Court considering the oral as well as documentary evidences recorded a finding that Panbatiya was the daughter of Gyani Yadav. The trial Court also came to the conclusion that Hari Yadav was the son of Kuldeep Yadav and the sale deeds are legal, valid and for consideration and plaintiffs are in possession of the property and, therefore, decreed the plaintiff's suit.

7. The learned senior counsel, Mr. Sidheshwari Prasad Singh appearing on behalf of the appellant submitted that the plaintiff had admitted that Rameshwar Yadav was the son of Kuldeep Yadav, therefore, the right interest of the defendant's ancestor has been admitted by the plaintiff. The

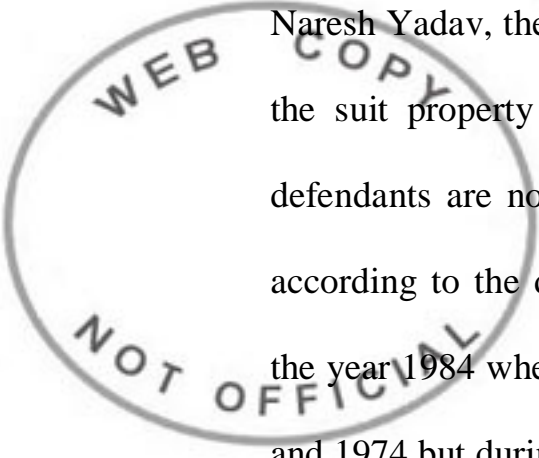


plaintiff's case is also that Rameshwari Yadav and Hari Yadav were joint in Laggit and there is no evidence regarding partition between them and in fact, alternatively, the plaintiffs also claimed 1/4<sup>th</sup> share which shows that the plaintiffs are trying to grab the joint family property. The plaintiffs being the purchaser cannot have the better title than their vendor. Being the stranger, they cannot be allowed to say that Mangari had no share in the property, therefore, even if it is admitted that Hari was a son of Kuldeep then also plaintiffs are entitled for 1/6<sup>th</sup> share. The vendor, Ram Naresh Yadav was alive on the date of filing the suit who was necessary party but because he was not made defendant, the suit is bad for non-joinder of necessary party. He was the person who would have supported or denied the execution of the sale deed or passing of consideration. The plaintiff also not examined him as witnesses in support of their case. No witness of the village has been examined in support of the execution of the sale deed of the year 1970 and 1974 and in fact original sale deed were not produced. Certified copies of the sale deeds have been produced. The learned counsel next submitted that the original sale deeds never seen in the light of the day and it is clear that the remaining amount of consideration of Rs.2,000/- is of ext.1/B to 1/H has not been paid and there is no evidence at all in support of the payment of the remaining consideration amount. Mere execution of sale deeds will not confer title as possession was not delivered. The possession of the defendants was declared in 145 Cr.P.C. proceeding on 15.4.1975 whereas the suit has been filed in the year 1984,



therefore, the suit itself is barred by law of limitation. The learned counsel further submitted that the order passed under 145 Cr.P.C. proceeding will be valid till the order is set aside by competent Civil Court and the presumption of possession is forward and backward both, therefore, the plaintiff or their vendors were never in possession of the property. According to Article 113 of the Limitation Act read with Section 27 of the Limitation Act, the plaintiff's suit is barred. The learned Court below has not considered the oral and documentary evidences properly and relied upon wrongly the documentary evidences ext.2, 11, 12 12A and 13. The trial Court also wrongly relied upon ext.10 series and 8 series. The learned counsel next submitted that the plaintiffs intentionally withhold the original sale deed; therefore, they played fraud upon the Court. In such circumstances, when fraud is played on the Court in view of the decision of the Apex Court reported in ***A.I.R. 1994 SC 853 (S. P. Chengalvaraya Naidu vs. Jagannath.)***, the plaintiff's suit should have been dismissed on that ground alone but the learned Court below did not consider this aspect of the matter. In support of the contention that there is presumption of possession forward and backward, the learned counsel relied upon the decision of the Apex Court reported in ***A.I.R. 1966 SC 605 (Ambika Prasad Thakur & Ors. vs. Ram Ekbal Rai)***. On behalf of the appellant, a written argument has also been filed which is on record.

8. On the other hand, the learned senior counsel, Mr. Dwivedi appearing on behalf of the plaintiff-respondent submitted that once it is



held that Hari Yadav is the son of Kuldeep Yadav then automatically, the plaintiff has purchased the property from either Hari Yadav or his son Ram Naresh Yadav, therefore, it cannot be said that the plaintiff have no title on the suit property nor it can be said that the transaction is void. The defendants are nobody to challenge the passing of consideration because according to the defendants themselves, Ram Naresh Yadav was alive in the year 1984 when the suit was filed. The sale deeds are of the year 1970 and 1974 but during this long period, the vendor or his successor in interest never challenge the title and possession of the plaintiff nor passing of consideration nor exchange of registration receipt. The vendor of the plaintiff or their successor have only the right to challenge all these matters which the appellant are now raising, therefore, no such defence is available to the defendants-appellants. It is not the case of the defendant that Hari or his son sold even the lands of Rameshwar Yadav or that they sold the entire family property. So far fraud is concerned, also it is not their case that fraud was played on them. Therefore, this defence also not available to them. If in fact fraud is played on Court then it is between the Court and the plaintiff, therefore, the defendants have got no locus standi and on this ground, the Judgment cannot be said to be vitiated. So far consideration of evidence is concerned, the plaintiffs have adduced oral evidences as required under Section 50 of the Evidence Act in support of the relationship of Hari with Kuldeep and also produced very old documentary evidences and considering these evidences, the trial Court has recorded the

finding to the effect that Hari was the son of Kuldeep Yadav. There is no reason as to why this finding should be interfered with.

**9.** So far the suit being barred by law of limitation is concerned, the learned counsel submitted that Article 113 of the Limitation Act is not applicable in the present case because the plaintiffs have filed the suit under Article 65 of the Limitation Act and, there is no pleading about adverse possession by the defendant.

**10.** In view of the above rival contentions of the parties, the points arises for consideration in this First Appeal is as to whether the plaintiffs have been able to prove their title on the basis of the sale deeds purchased from Hari and Ram Naresh and whether Hari was the son of Kuldeep from second wife.

**11.** It is admitted fact that Gyani and Akbar were the two brothers. According to plaintiff, Kuldeep had one son from first wife and two sons from second wife whereas according to the defendant Kuldeep had married only once. Second time, he never married, he kept concubine who had come to him with a child named Hari who was not the son of Kuldeep. From Kuldeep, this concubine had a son named Neta but he died issueless in the year 1943-44. This Hari and his son are the vendor of the plaintiff. Therefore, this is the most important point for consideration. If it is found that Hari was not the son of Kuldeep then the plaintiffs have got no case, they will be non-suited, on this ground alone because they are deriving title from Hari and his son. If it is found that Hari is the son of Kuldeep Yadav

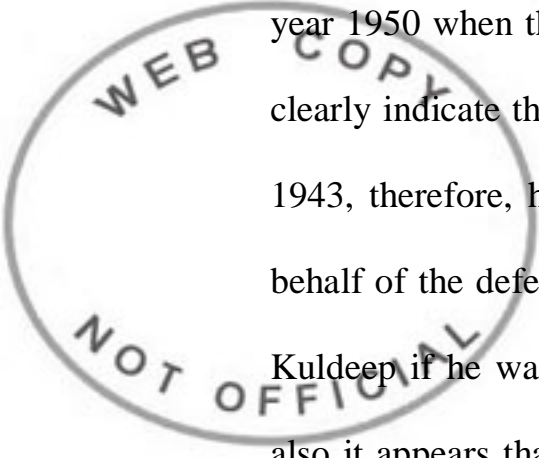


then the other question as to whether Panbatiya was daughter of Akbar or Gyani is immaterial as admittedly in the present case, the defendants are claiming through gift deed from Janak s/o Panbatiya but the gift deed was never produced by them. Mangari also died. Admittedly, Akbar Yadav died prior to cadastral survey, therefore, the property will devolve on the sons of Gyani according to survivorship. The plaintiffs have produced evidences in support of their case that Hari was son of Kuldeep from second wife whereas the defendants has produced oral as well as documentary evidences in support of their case that Hari was not the son of Kuldeep. It may be mentioned here that the evidences adduced by the defendants are in negative form. It is well settled that negative need not be proved. They have denied that Hari was son of Kuldeep from second wife and in fact there was no second marriage rather she was concubine of Kuldeep who had brought Hari when she came to live with Kuldeep. The plaintiffs have examined 12 witnesses. Out of them 6 witness are formal witness and the brothers 6 are material witnesses. Therefore, here the evidence of material witnesses are being discussed. P.W.1 P.W.2 P.W.3 and P.W.4 are of the same village Dhana, i.e., the village of Kuldeep. All of them have stated that Hari and Neta were the sons of Kuldeep Yadav from his second wife. P.W.2 has stated that he had seen mother of Hari and that Hari was 5 years older than him. The evidence of P.W.3 is also in terms of Section 50 of the Evidence Act. He has stated that he had learnt from his grand father that Kuldeep had a son named Hari from second wife.

Moreover the witnesses are of the same village as such competent to say about the relationship because of conduct and special means of knowledge.

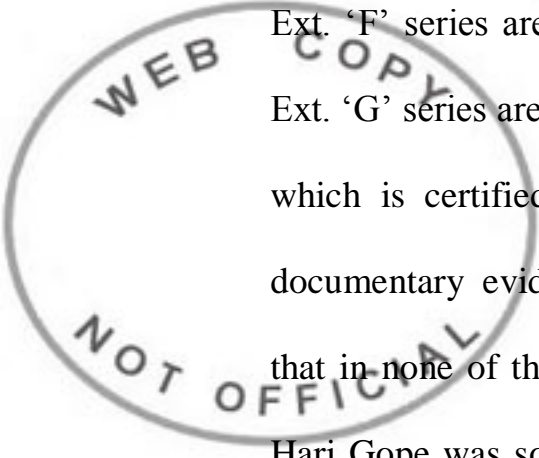
P.W.5 is plaintiff No.5 himself. He has fully supported the case of the plaintiff. On the contrary, the defendants have adduced 25 witnesses. It appears that all the witnesses who are material witnesses are of different village who have only stated that Kuldeep had only one son from his wife namely Rameshwar Yadav. Some of them have stated that they have never seen either Kuldeep or Hari. The village of D.W.3 is 12 kilometer away from village Dhana. D.W.6 is of village Lakhantola. Village of D.W.9 is Sadabaha. The village of D.W.13 is keshopur. From perusal of the evidences of these witnesses and D.W.18, D.W.21 and D.W.22, it appears that they have only denied that Hari is not the son of Kuldeep and Kuldeep had never married second wife rather he had concubine from whom Neta was born. D.W.1 to 4, 5, 7, 8, 14 to 17, 19, 20, 23, 25 are formal witness. These are the oral evidence produced by the parties regarding the parentage of Hari. As stated above, the evidence of the defendants are negative evidence whereas the plaintiffs have adduced cogent evidence and have examined the witnesses of the same village and their evidence are admissible under Section 50 of the Evidence Act.

**12.** Now, let us consider the documentary evidences. Ext.4 is the voter list of the year 1961 of village Dhana from which it appears that the father's name of Hari Gope has been mentioned as Kuldeep Gope. Ext.7 is the original Hukumnama dated 25.6.1950 executed by Mahant Kapil



Devanand in favour of Ram Bharosa Gope s/o Gyani Gope, Ishwar Gope, Hari Gope s/o Kuldeep Gope of village Dhana. This document is of the year 1950 when there was no dispute between the parties. This document clearly indicate that Hari Gope was son of Kuldeep. Neta died in the year 1943, therefore, his name is not mentioned. There is no explanation on behalf of the defendant as to how Hari Gope has been described as son of Kuldeep if he was not his son. Ext.14 is Pariwaric Pushtika from which also it appears that the fathers name of Hari Gope has been mentioned as Kuldeep Gope. The most important document is ext.15 which is sales certificate of execution case No.2398 of 1939 wherein the decree holders are Lakhandeo Singh and Firangi Singh whereas the Judgment debtors were Bharosa Gope s/o Gyani Gope, Ishwar Gope, Hari Gope and Neta Gope son of Kuldeep Gope has been mentioned. It may be mentioned here that in the year 1937, Neta Gope was alive, therefore, he has also been shown as son of Kuldeep Gope. Although it is the case of the defendant that Hari was brought by concubine of Kuldeep but no reliable evidence in support of the said fact has been produced by the plaintiff except some bald statement made by some of the defendants witnesses. In view of the documentary evidences discussed above, the only bald statement either pleaded or made / stated in evidence have got to be discarded outrightly.

**13.** The defendants have also produced some of the documentary evidences such as ext. 'I' series which are notices of rent suit only in the name of Ishwar Gope and Bharosa Gope. Ext. 'J' series which is plaint of



rent suit of the year 1945. Ext. 'A' is the voter list of the year 1971. Ext. 'H' series are landlord receipts and ext. 'C' series are said rent receipts. Ext. 'F' series are Kanal Parcha. Ext. 'D' series are Chowkidari receipt. Ext. 'G' series are certified copy of Kanal Kheshra. Ext. 'K' has been filed which is certified copy of Pariwarik Pushtika. On the basis of these documentary evidences, the learned counsel for the appellant submitted that in none of these documents the name of Hari Gope is mentioned. If Hari Gope was son of Kuldeep, his name should have been mentioned in thee documents. So far this submission is concerned, in my opinion has got no force. No presumption can be made that Hari was not the son of Kuldeep because of the fact that his name is not mentioned either in the plaint or in the notice issued in the rent suit or his name is not mentioned in voter list or in rent receipt. These are not the relevant consideration of giving any opinion about the relationship of the person, particularly when there is cogent positive reliable oral and documentary evidences produced by the plaintiff as discussed above. So far ext. 'A' is concerned, it is the voter list of the year 1971. It is the case of the plaintiff that Hari died in the year 1971, therefore, it makes no difference if his name is not mentioned in the voter list but on that basis, it cannot be said that he was not the son of Kuldeep. Moreover, it is the case of the defendant that after death of Kuldeep, concubine left the village.

**14.** In view of the above discussion of the evidences, I find that the plaintiff have been able to prove that Hari Yadav was the son of Kuldeep

Yadav from the second wife. In such circumstances, I find no reason to interfere with the finding of the trial Court, therefore, the finding of the trial Court is hereby confirmed.

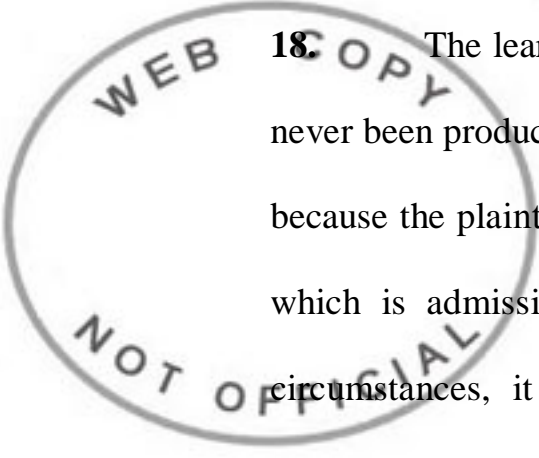
15. The learned counsel for the appellant submitted that the defendants are in possession of the property and their possession has been declared in 145 Cr.P.C. So far this declaration of possession is concerned, is valid till it is set aside by competent Civil Court and this possession has got presumption forward and backward as has been held by the Apex Court in the case of *Ambika Prasad Thakur (Supra)*. So far this submission is concerned, it may be mentioned here that it is the case of the plaintiff that there was separation between Ishwar Gope and Hari Gope. Hari Gope and his son sold their property to the plaintiffs. We have found above that Hari was the son of Kuldeep Yadav, therefore, possession will follow the title. The plaintiffs have examined the witnesses in support of their possession. Witnesses have stated that after purchase, the plaintiffs are coming in possession. So far presumption of forward and backward is concerned, no doubt it is settled principle of law but then in the present case only because the possession has been declared in 145 Cr.P.C. proceeding, the plaintiffs cannot be non-suited as they have claimed for confirmation of possession and in the alternative for recovery of possession also. The suit will never be barred as the same has been filed under Article 65 of the Limitation Act. The defendants never claimed adverse possession. In such circumstances, even if it is held that the defendants are in possession then also the plaintiff

are entitled for recovery of possession, therefore, in my opinion, so far question of possession is concerned here it is only academic question and it will not affect the right of the parties.

**16.** The learned counsel for the appellant submitted that fraud has been played upon on the Court. As stated above on this question, the learned counsel relied upon the case of *S. P. Chengalvaraya Naidu (Supra)*. So far this question is concerned also, it is not applicable here because the plaintiffs have produced certified copy of the sale deeds which have been marked exhibit. Because of non-production for original sale deed, it cannot be said that fraud has been played upon the Court. The decision relied upon by the plaintiff is not applicable here. The plaintiffs have not suppressed any fact. After considering all the facts pleaded by the plaintiff, the decree has been passed by the Court below.

**17.** The learned counsel for the appellant next submitted that there was no Takabjul Badlen, therefore, original sale deeds were never produced. So far this question is concerned also, it appears that the plaintiffs are not claiming title through the defendants. Whether there is payment of consideration or there was exchange of Takabjul Badlen or not, it is a matter between the vendor and the vendee. So far this transaction is concerned, the defendants have nothing to do as they are stranger to the transaction. We have recorded the finding that Hari was son of Kuldeep. Therefore, it is Hari and his son or their successor in interest or their heirs who could have challenged the passing of consideration or Takabjul Badlen

but merely on these grounds, alleged by the defendants, the sale deeds executed by rightful owner cannot be held to be void transaction.



**18.** The learned counsel next submitted that original sale deeds have never been produced. So far this ground is concerned also has got no force because the plaintiff's have produced the certified copies of the sale deeds which is admissible under Section 63 of the Evidence Act. In such circumstances, it cannot be said that because original have not been produced, therefore, title will not pass.

**19.** The learned counsel next submitted that the first deed was executed in the year 1970 for 10 katha only to see that whether there is any objection or not and then cunningly when there was no objection, the other sale deeds were executed in the year 1974 for 8 biggha land. There are about 8 sale deeds. No reason has been assigned as to why so many sale deeds were executed. In my opinion on this ground, it cannot be said that sale deeds are fraudulent or that those are forged sale deeds. The presumption of validity is attached to the registered document. Since the sale deeds have been executed by the rightful owner, there cannot be any presumptive in validity attached to such a transaction. The documents have been executed as far back as in 1970-1974 and it was never challenged by either the vendor of the plaintiff or by the defendants. In such circumstances, the documents remain valid because of the presumption that the apparent state of affairs is the real state of affairs and the same will continue until the facts invalidating the same are established. The grounds



raised by the appellants are not the grounds on the basis of which it cannot be said that documents are void documents or obtained by playing fraud or are illegal documents or consideration did not pass because all these grounds are not available to the defendants. Admittedly, till the year of the filing of suit, the vendor of the plaintiff was alive.

**20.** The learned counsel next submitted that neither the vendor of the plaintiff nor the plaintiffs were mutated nor rent receipts were obtained. In my opinion, on these grounds also it cannot be said that the title of the defendants was extinguished. Moreover, the defendants are not claiming title on the basis of adverse possession.

**21.** The learned counsel next submitted that the vendors were not made party and they were never examined as witness. So far this submission is concerned also has got no force because the plaintiffs are claiming through their vendors and it has been established that their vendors had the right title interest in the suit property. The vendor was neither necessary party nor his non-examination will non-suit the plaintiff. All the grounds raised by the appellant have got no force and the plaintiffs cannot be non-suited on these grounds at the instance of the defendants through whom the plaintiffs are not claiming title. It cannot be said that the question could not have been decided in absence of the vendor of the plaintiff. Therefore, in my opinion, vendor was not at all necessary party. So far defendants are concerned, they are third party who cannot challenge the title of the vendor of the plaintiff. Moreover, in the present case, the



factum of execution of the sale deeds has not been challenged or disputed by the defendants-appellants. Therefore, examining the vendors as witness was not condition precedent for validating the sale deed. Presumption is in favour of plaintiff and the defendant should have rebutted the said presumption.

22. So far rent receipts or Kanai Parha or record of right are concerned, those are revenue records and it is well settled principle of law that revenue records neither create title nor extinguish title.

23. From the above discussion of the facts and circumstances and the evidences and materials available on record, it appears that the defendants-appellants are making frivolous attempt to defeat the plaintiff's suit on frivolous grounds. The trial Court considering all aspect of the matter as recorded the finding and I find no reason as to why the same be interfered with.

24. **In the result, this First Appeal is dismissed with cost of Rs.10,000/- to be paid by the appellants to the plaintiff-respondents within 2 months from today failing which the plaintiff-respondent will be at liberty to realise the same through the process of the Court.**

**(Mungeshwar Sahoo, J.)**